

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: DYNAMIC RANDOM ACCESS
MEMORY (DRAM) ANTITRUST
LITIGATION

Plaintiff(s),

No. MDL 02-1486 PJH

PRETRIAL ORDER

This Document Relates to:

All Direct Purchaser Actions

The court enters the following pretrial order with respect to pretrial preparation and schedule.

PRETRIAL SCHEDULE

TRIAL DATE: Monday, **April 23, 2007**, at 8:30 a.m., Courtroom 3, 17th Fl.
JURY ☒ COURT ☐

TRIAL LENGTH: No more than **6** weeks.

PRETRIAL CONFERENCE DATE: **March 22, 2007**, at 2:30 p.m.

PRETRIAL INSTRUCTIONS

1. Motions pursuant to Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), challenging the reliability of expert testimony, may be noticed for hearing on the date dispositive motions will be heard or on any available hearing date up to and including the date of the final pretrial conference. Irrespective of the hearing date, the briefs shall be filed in accordance with Civil L. R. 7-2 - 7-5, on a 35-day briefing schedule.

2. Motions *in limine* are limited to motions to exclude specific items of evidence on a ground and upon such authority as would be sufficient to sustain an objection to such evidence at trial. The court will not generally consider a motion presenting a purely legal issue in the guise of a motion *in limine*.

FINAL PRETRIAL CONFERENCE

1. Each party shall attend personally or by counsel who will try the case.

2. **Not less than forty (40) calendar days** prior to the pretrial conference, all counsel and/or parties shall meet and confer regarding preparation of the joint pretrial statement.

3. **Not less than thirty (30) calendar days** prior to the pretrial conference, counsel and/or parties shall:

a. Serve and file a **joint** pretrial statement. (Separately filed statements will not be accepted by the court and monetary sanctions will be imposed upon the party failing to cooperate in the preparation of a joint statement). The pretrial statement shall include the disclosures required by Fed. R. Civ. P. 26(a)(3) as well as the following:

- (i) A brief description of the substance of the claims and defenses which remain to be decided.
- (ii) A detailed statement of all relief sought, itemizing all elements of damages claimed.
- (iii) A statement of all relevant undisputed facts to which the parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.
- (iv) A statement of all relevant disputed facts which remain to be decided.
- (v) A statement of stipulations requested or proposed.
- (vi) A brief statement of disputed points of law concerning liability and relief. Legal argument on these points shall be reserved for the trial briefs.
- (vii) A statement of whether bifurcation or a separate trial of specific issues is feasible and desired.

(viii) A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.

- b. Serve and file trial briefs (not to exceed 25 pages), which shall specify each cause of action and defense remaining to be tried along with a statement of the applicable legal standard (no opposition shall be filed);
- c. Serve and file motions *in limine*, which shall be contained in one document and shall not exceed 25 pages;
- d. Serve and file a list of deposition excerpts for witnesses who will not testify in person, (specifying the witness, page and line references) and other discovery responses that will be offered at trial;
- e. Serve and file a list of all witnesses to be called at trial, in person or by deposition, other than solely for impeachment or rebuttal, with a brief statement describing the substance of the testimony to be given;
- f. Serve and file a numerical list of exhibits that will be offered as evidence in a party's case in chief in support of a claim or defense, with a brief statement describing the substance and purpose of each exhibit and the name of the sponsoring witness;
- g. Exchange exhibits which shall be premarked, tabbed and in binders. Plaintiff shall use numbers (1, 2, 3, etc.) and defendant shall use numbers preceded by a letter (A-1, A-2, A-3, etc.). Additional parties shall also use a letter preceding numbers (B-1, B-2, B-3, or C-1, C-2, C-3, etc.).
- h. Submit two sets for jury trials and three sets for court trials of all premarked exhibits to the Clerk's Office (exhibits are not filed);
- i. Serve and file any request regarding the treatment of confidential or sealed documents. (See, Standing Order on Sealed and Confidential Documents).
- j. Serve and file proposed joint voir dire questions and joint jury instructions for cases to be tried by jury;

1 k. Serve and file proposed findings of fact and conclusions of law for cases
2 to be tried by the court.

3 l. Serve and file a proposed verdict form which contains no reference to
4 submitting party.

5 4. No party shall be permitted to call any witness or offer any exhibit in its case in
6 chief that is not disclosed in these pretrial filings without leave of court and for good cause.

7 5. **Not less than fifteen (15) calendar days** prior to the pretrial conference, counsel
8 and/or parties shall serve and file any opposition to a motion *in limine*. No replies shall be filed.
9 All motions shall be heard at the pretrial conference unless otherwise ordered. The parties shall
10 not file separate objections, apart from those contained in the motions *in limine*, to the opposing
11 party's witness list, exhibit list or discovery designations.

12 JURY TRIAL

13 Jury Selection shall proceed as follows: The Jury Commissioner will summon 20 to 25
14 prospective jurors. The Courtroom Deputy will select their names at random and seat them in
15 the courtroom in the order in which their names are called. Voir dire will be conducted of
16 sufficient venire members so that six to eight will remain after all peremptory challenges and
17 an anticipated number of hardship dismissals and cause challenges have been made.

18 The court will then take cause challenges and discuss hardship claims at side bar. The
19 court will inform counsel which hardship claims and cause challenges will be granted, but will
20 not announce those dismissals until the selection process is completed. Peremptory challenges
21 will be made in writing and passed between counsel. The court will strike at one time those with
22 meritorious hardship claims, those excused for cause, and those challenged peremptorily, and
23 then seat the first six to eight people remaining in numerical order.

24 The attached voir dire questionnaire shall be given to the venire members and copies
25 of the responses will be made available to counsel at the beginning of voir dire. Counsel shall
26 submit a **joint set** of additional voir dire questions to be posed by the court. Any voir dire
27 questions on which counsel cannot agree may be submitted separately. Counsel will be
28 permitted brief follow-up voir dire after the court's questioning.

1 The following jury instructions from the Ninth Circuit Manual of Model Jury Instructions
2 Civil (2001 Edition) shall be given absent objection: 1.1 - 1.14, 2.1 - 2.2, 3.1 - 3.3. 3.5 - 3.7,
3 4.1 - 4.4. Counsel shall submit a **joint set** of case specific instructions using the Ninth Circuit
4 Manual where appropriate. Do not submit duplicates of those instructions listed above. Any
5 instructions on which counsel cannot agree may be submitted separately. Each instruction shall
6 be typed in full on a separate page with citations to the authority upon which it is based **and** a
7 reference to the party submitting it. A second blind copy of each instruction shall also be
8 submitted omitting the citation to authority and the reference to the submitting party, but
9 retaining the title of the instruction.

10 TRIAL SCHEDULE

11 The court's trial schedule is 8:30 a.m. to 1:30 p.m. with two fifteen-minute breaks, on
12 Monday, Tuesday, Thursday and Friday.

13 IT IS SO ORDERED.

14 Dated: January 18, 2007



15 PHYLLIS J. HAMILTON
16 United States District Judge
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CONFIDENTIALJUROR QUESTIONNAIRE

Please fill out this form as completely as possible and print clearly. This will assist the judge and the lawyers in selecting a jury and will save time for them and for you. Because copies will be made for the attorneys and the judge, do not write on the back of any page. If you need more room, continue at the bottom of the page. Thank you for your cooperation.

1. Your name: _____

2. Your age: _____

3. City in which you reside: _____

4. If you have lived there for fewer than five years, where did you live before:

5. Your place of birth: _____

6. Your marital status: (circle one)

single married separated divorced widowed

7. What is your occupation and how long have you worked in it? (If you are retired, please describe your main occupation when you were working).

8. Who is (or was) your employer? _____

9. If you have held this job for fewer than five years, describe your previous job:

10. If you are married, please list your spouse's occupation.

11. If you have children, please list their ages and genders and, if they are employed, please give their occupations.

12. Please describe your education background:

Highest grade completed: _____

College and/or vocational schools you have attended:

Major areas of study: _____

13. Have you served in the military? _____

14. Have you ever had jury experience? _____ No. of times? _____

If yes: State/County Court _____ Federal Court _____

When? _____

Was it a civil or criminal case? _____

Did any of the juries reach a verdict? _____